

Order 92-1

Proposed exemption of certain legal malpractice liability insurance policies from the separate aggregate defense cost limit of acts 1987, no. 024 s 3

January 6, 1992

Now, on this the 6th day of January, 1992, the aforementioned matter comes on before Lee Douglass, Insurance Commissioner for the State of Arkansas; From the facts as presented to him, the said Commissioner does hereby FIND AS FOLLOWS:

1. That the St. Paul Property and Liability Company has submitted for approval and issuance within the State of Arkansas its "Lawyers Professional Liability Protection Policy," on a "Claims Made" basis and bearing its Form No. 43997 Ed. 4-88.
2. That such policy form contains at its page "1 of 4" a clause which reads: "Our duty to defend claims or suits ends when we have used up the limits of coverage that apply with the payment of judgments, settlements or the cost of defense." Such provision causes this policy to be characterized as one which provides "defense within limits."
3. That under the provisions of Ark. Code Ann. s 23-79-307(5) it is stated that no policy may be approved for use within Arkansas if it contains provisions which would reduce the limit of liability available for judgments or settlements by the amount of payment made for defense cost or expense UNLESS a separate limit for defense costs equal to one hundred per cent (100%) of the annual aggregate liability for judgments or settlements is also offered or provided for defense costs and claims expenses.
4. While policy Form No. 43997 contains no such separate aggregate limit for defense costs and expenses, no such policy is, in fact, offered by St. Paul or any other carrier within Arkansas in the Legal Malpractice Liability Insurance Market.
5. That there is a market availability problem within the State of Arkansas for legal malpractice policies for law firms engaging in securities law work in that, in fact, many of said firms are unable to obtain any coverage from the admitted market but are compelled to seek coverage from non-admitted or "surplus lines" carriers.
6. That such firms are, further, having difficulty obtaining policies even from such non-admitted sources in the higher limits desired in the sum of \$5,000,000.00 or more.
7. That the separate aggregate limit for defense costs and expenses may not be practically applied in the area of legal malpractice policies issued to lawyers or law firms engaging in a securities law practice and in coverage amounts of \$5,000,000.00 or more, and, further, the application of the separate aggregate limit requirement within this limited spectrum is not necessary or desirable for the protection of the public.

CONCLUSIONS OF LAW

1. That the Commissioner has authority to issue a limited order of exemption upon findings as above set forth.

IT IS THEREFORE ORDERED AS FOLLOWS:

1. That it shall hereafter be no objection to the approval of a policy for legal malpractice liability insurance on a claims made basis within Arkansas that it is issued on a "defense within limits" basis and that it does not offer or provide a separate aggregate limit for defense costs or expenses in an amount equal to the liability limit; PROVIDED, HOWEVER, that such exemption shall apply only to such policies issued to lawyers or law firms engaged or engaging in a securities law practice and as to policies for such lawyers or law firms with liability and defense limits of \$5,000,000.00 or more.

Lee Douglass
Insurance Commissioner
